

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

Michael Victor

Plaintiff,

v.

Reynolds, et al.

Defendants.

Case No: 1:20-cv-13218

District Judge: Thomas L. Ludington

Magistrate Judge: Patricia T. Morris

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**DEFENDANTS ADVANCED CORRECTIONAL HEALTHCARE, INC.
AND KIMBERLY REYNOLDS, L.P.N.'S MOTION IN LIMINE TO LIMIT
PLAINTIFF'S DAMAGES TO THOSE DIRECTLY RELATED TO HIS
PHYSICAL INJURY**

NOW COMES Defendants ADVANCED CORRECTIONAL
HEALTHCARE, INC., and KIMBERLY REYNOLDS, L.P.N. (hereinafter "ACH
Defendants"), by and through their attorneys, CHAPMAN LAW GROUP, and for
their Motion In Limine To Limit Plaintiff's Damages To Those Directly Related To
His Physical Injury, state as follows:

1. On December 8, 2020, Plaintiff Michael Victor filed his Complaint against Otsego County Jail (“OCJ”); the City of Gaylord on behalf of the Gaylord Police Department (“GPD”); Officer Blake Huff; and Kimberly Reynolds, L.P.N. (**ECF No. 1**). Plaintiff alleged that the Defendants were deliberately indifferent to his serious medical needs in violation of his Eighth and/or Fourteenth Amendment rights by failing to administer his seizure medication. (*Id.*).

2. On December 17, 2021, Plaintiff moved to amend his complaint. (**ECF No. 30**). Plaintiff’s First Amended Complaint alleges that LPN Reynolds was deliberately indifferent to his serious medical needs and that Advanced Correctional Healthcare, Inc., and Otsego County are liable pursuant to *Monell*. (**ECF No. 30-2**).

3. In support of Plaintiff’s claims, Plaintiff sat for a deposition on November 22, 2021, wherein he discussed in pertinent part his claimed damages and how the alleged violations of his rights have affected his life.

4. In his own words, Plaintiff unequivocally stated he did not suffer any damages beyond his physical injury and the at issue incident has not affected his life at all:

Victor, Michael, (Page 56:9 to 56:23)

56

9 Q. All right. And how much time did you miss, did you

10 say, how many days did you miss from work?

11 A. A week or two.

12 Q. Do you know which it was, what do you think it is?

13 A. Well, I don't know.

14 Q. Okay. So it's --

15 A. I don't want to give you the wrong answer.

16 Q. Well, it's Sunday when you're being released.

17 A. Yes.

18 Q. So you obviously --

19 A. So I missed that whole -- I for sure missed that whole
20 week of work.

21 Q. Okay. Do you remember staying home a weekend, and then
22 not going to work another Monday?

23 A. I can't recall.

Victor, Michael, (Pages 57:21 to 58:1)

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21 Q. Okay. You know, Mike, are you -- you know, is it your
22 testimony here today that somehow you're different now
23 than you were before this incident, **has this affected**
24 **you in some way, are you unable to work, do you have**
25 **diminished mental capacity?**

58

1 A. **No.**

Victor, Michael, (Page 61:1 to 61:14)

61

1 Q. Okay. I could have asked you this earlier, but you're
2 not having any nightmares because of this injury --

3 A. No.

4 Q. -- or anything like that, correct?

5 A. Correct.

6 Q. And you told me you're not afraid of cops, right?

7 A. No, I'm not afraid of cops.

8 Q. Okay. **How has this incident changed your life?**

9 A. **It hasn't.**

10 Q. Okay. So is it strictly -- **as we sit here today, are**
11 **the medical, or the injuries as we call it, the damages**
12 **that you allege you suffered from this strictly the**
13 **physical injuries?**

14 A. **Sitting here today, yes.**

(Ex A – Plaintiff's Deposition Transcript). (Emphasis added.)

5. Fed. R. Civ. P. 9(g) states: "If an item of special damages is claimed, it must be specifically stated."

6. Federal district courts have authority to make in limine rulings pursuant to their authority to manage trials. *Luce v. United States*, 469 U.S. 38, 41 n. 4, 105 S. Ct. 460, 463 n. 4, 83 L. Ed. 2d 443 (1984).

7. Here, as Plaintiff has failed to identify or provide evidence of any other damages besides those directly related to his physical injury, (including no affect or change on his life, no inability to work, no diminished mental capacity, and only one week off of work), the Court should limit Plaintiff to only those such damages previously identified in Plaintiff's deposition and supported by documentary evidence, i.e. any out of pocket medical expenses, the above described non-economic damages directly related to the physical injury, and limited work loss of at most one to two weeks.

8. Moreover, as Plaintiff has previously disavowed any other damages, he should be precluded from testifying to any damages besides those described above. Any new testimony regarding previously un-identified categories of damages would be substantially prejudicial to defendants and only serve to confuse the jury as to what damages are truly recoverable in this matter.

9. Pursuant to Local rule 7.1 Defense counsel sought concurrence in the present motion on January 9, 2023. Plaintiff does not concur with the relief sought.

WHEREFORE, Defendants ADVANCED CORRECTIONAL HEALTHCARE, INC., AND KIMBERLY REYNOLDS, L.P.N. respectfully request this Court Grant this Motion *in Limine*, and enter an order:

- A. limiting Plaintiff's damages to only those directly related to his physical injury previously identified in Plaintiff's deposition and supported by documentary evidence;

- B. excluding all other damages not previously identified by Plaintiff;
- C. precluding Plaintiff from making any reference, opening/closing statements, arguments, testimony, or jury demands related to affects or changes on Plaintiff's life, diminished mental capacity, inability to work, decrease in earning capacity, emotional distress damages, or any other previously unidentified special damages not directly related to the physical injury; and
- D. granting such other relief as the Court deems just and equitable.

Respectfully submitted,
CHAPMAN LAW GROUP

Dated: January 10, 2024

/s/ Devlin Scarber
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**BRIEF IN SUPPORT OF DEFENDANTS ADVANCED CORRECTIONAL
HEALTHCARE, INC. AND KIMBERLY REYNOLDS, L.P.N.'S MOTION
IN LIMINE TO LIMIT PLAINTIFF'S DAMAGES TO THOSE DIRECTLY
RELATED TO HIS PHYSICAL INJURY**

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INDEX OF EXHIBITS

There are no exhibits attached to this brief.

STATEMENT OF ISSUES PRESENTED

- I. WHETHER THE COURT SHOULD LIMIT PLAINTIFF TO CLAIMED DAMAGES FOR MEDICAL CARE RELATED TO HIS ALLEGED INJURY BASED ON PLAINTIFF'S OWN TESTIMONY.

DEFENDANTS ANSWER:	YES.
PLAINTIFF ANSWERS:	NO.

CONTROLLING/APPROPRIATE AUTHORITY FOR RELIEF SOUGHT

Fed. R. Civ. P. 9(g) states: “If an item of special damages is claimed, it must be specifically stated.”

Federal district courts have authority to make in limine rulings pursuant to their authority to manage trials. *Luce v. United States*, 469 U.S. 38, 41 n. 4, 105 S. Ct. 460, 463 n. 4, 83 L. Ed. 2d 443 (1984). Motions in limine are generally used to ensure that trials are managed in an evenhanded and expeditious way by eliminating evidence that is clearly inadmissible for any purpose. *Ind. Ins. Co. v. GE*, 326 F. Supp. 2d 844, 846 (N.D. Ohio 2004); see *Jonasson v. Lutheran Child & Family Servs.*, 115 F.3d 436, 440 (7th Cir.1997).

I. STATEMENT OF RELEVANT FACTS

On December 8, 2020, Plaintiff Michael Victor filed his Complaint against Otsego County Jail (“OCJ”); the City of Gaylord on behalf of the Gaylord Police Department (“GPD”); Officer Blake Huff; and Kimberly Reynolds, L.P.N. (**ECF No. 1**). Plaintiff alleged that the Defendants were deliberately indifferent to his serious medical needs in violation of his Eighth and/or Fourteenth Amendment rights by failing to administer his seizure medication. (*Id.*).

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In support of Plaintiff’s claims, Plaintiff sat for a deposition on November 22, 2021, wherein he discussed in pertinent part his claimed damages and how the alleged violations of his rights have affected his life. In his own words, Plaintiff unequivocally stated he did not suffer any damages beyond his physical injury and the out-of-pocket medical expenses related to same, and the at issue incident has not affected his life at all:

Victor, Michael, (Page 56:9 to 56:23)

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- 9 Q. All right. And how much time did you miss, did you
10 say, how many days did you miss from work?
11 A. A week or two.
12 Q. Do you know which it was, what do you think it is?
13 A. Well, I don't know.
14 Q. Okay. So it's --

- 15 A. I don't want to give you the wrong answer.
16 Q. Well, it's Sunday when you're being released.
17 A. Yes.
18 Q. So you obviously --
19 A. So I missed that whole -- I for sure missed that whole
20 week of work.
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22 not going to work another Monday?
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24 **you in some way, are you unable to work, do you have**
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- 1 A. **No.**

Victor, Michael, (Page 61:1 to 61:14)

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- 1 Q. Okay. I could have asked you this earlier, but you're
2 not having any nightmares because of this injury --
3 A. No.
4 Q. -- or anything like that, correct?
5 A. Correct.
6 Q. And you told me you're not afraid of cops, right?
7 A. No, I'm not afraid of cops.
8 Q. Okay. **How has this incident changed your life?**
9 **A. It hasn't.**
10 Q. Okay. So is it strictly **-- as we sit here today, are**
11 **the medical, or the injuries as we call it, the damages**
12 **that you allege you suffered from this strictly the**
13 **physical injuries?**
14 A. **Sitting here today, yes.**
(Ex A – Plaintiff's Deposition Transcript). (Emphasis added.)

II. **LEGAL STANDARD**

The federal procedural and evidentiary rules that govern proceedings before the district court, as well as cases interpreting those rules, “all encourage, and in

some cases require, parties and the court to utilize extensive pretrial procedures – including motions *in limine* – in order to narrow the issues remaining for trial and to minimize disruptions at trial.” *United States v. Brawner*, 173 F.3d 966, 970 (6th Cir. 1999); *see also Louzon v. Ford Motor Co.*, 718 F.3d 556, 560 (6th Cir. 2013) (“A motion *in limine* is any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered.”) (internal quotation marks omitted).

“Motions *in limine* typically involve matters which ought to be excluded from the jury’s consideration due to some possibility of prejudice or as a result of previous rulings by the Court.” *Provident Life & Acc. Ins. Co. v. Adie*, 176 F.R.D. 246, 250 (E.D. Mich. 1997). District courts have broad discretion over matters involving the admissibility of evidence at trial. *See United States v. Seago*, 930 F.2d 482, 494 (6th Cir. 1991). “[I]n *limine* rulings are not binding on the trial judge, and the judge may always change his mind during the course of trial.” *Ohler v. United States*, 529 U.S. 753, 758 n.3 (2000) (citing *Luce v. United States*, 469 U.S. 38, 41-42 (1984)).

III. ARGUMENT

A. Plaintiff should be precluded from seeking any damages other than those testified to in his deposition.

Fed. R. Civ. P. 9(g) provides: “If an item of special damage is claimed, it must be specifically stated.” Special damages “are those that, although resulting from the

commission of the wrong, are unusual for the claim in question and not normally associated with the claim.” 2 Moore's Federal Practice—Civil § 9.08 (2019). In other words, “[s]pecial damages are those which are the natural but not the necessary consequence of the act complained of.” *Blair v. Bd. of Trs. of Sugarcreek Twp.*, No. 3:07-CV-056, 2008 U.S. Dist. LEXIS 71666, at *12 (S.D. Ohio Sep. 22, 2008); citing *Roberts v. Graham*, 73 U.S. 578, 579, 18 L. Ed. 791 (1867) (special damages must be particularly averred so that the defendant may be notified of the charge and come prepared to meet it).

The purpose of Fed. R. Civ. P. 9(g) is to provide the opposing party fair notice of the damage sought for allegedly improper conduct. *Roberts v. Graham*, 73 U.S. 578, 579, 18 L. Ed. 791 (1867). Furthermore, in pleading special damages, Plaintiff must allege that “[t]he special damages must be proximately caused by the improper conduct too.” *Ceres Protein, LLC v. Thompson Mech. & Design*, No. 3:14-CV-00491-TBR-LLK, 2016 U.S. Dist. LEXIS 143765, at *32 (W.D. Ky. Oct. 17, 2016); citing *Ventas, Inc. v. Health Care Prop. Inv'rs, Inc.*, 635 F. Supp. 2d 612, 624 (W.D. Ky. 2009). This adheres to the Supreme Court’s plausibility pleading standard prescribed by *Twombly* and *Iqbal*, which requires that “the well-pled facts must be sufficient to ‘raise a right to relief above the speculative level,’ such that the asserted claim is ‘plausible on its face.’” *Mitchell v. Fujitec Am., Inc.*, 518 F. Supp. 3d 1073,

1088 (S.D. Ohio 2021) (emphasis added); citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 546-47 (2007).

Here, as outlined above, Plaintiff unequivocally limited his own damages to medical care related to his alleged injuries and denied any other impact on his life. Accordingly, were the Court to allow Plaintiff to add unidentified damages at this stage in litigation would amount to nothing less than trial by surprise. Accordingly, based on his own testimony the Court should limit Plaintiff's damages to limit Plaintiff to only those enumerated damages previously identified in Plaintiff's deposition and supported by documentary evidence, i.e. any out-of-pocket medical expenses, non-economic damages directly related to the physical injury, and limited work loss of at most two weeks.

WHEREFORE, Defendants, ADVANCED CORRECTIONAL HEALTHCARE, INC., AND KIMBERLY REYNOLDS, L.P.N. respectfully request this Court Grant this Motion *in Limine*, and enter and order:

- A. limiting Plaintiff's damages to only those directly related to his physical injury previously identified in Plaintiff's deposition and supported by documentary evidence;
- B. excluding all other damages not previously identified by Plaintiff;
- C. precluding Plaintiff from making any reference, opening/closing statements, arguments, testimony, or jury demands related to affects or

changes on Plaintiff's life, diminished mental capacity, inability to work, decrease in earning capacity, emotional distress damages, or any other previously unidentified special damages not directly related to the physical injury; and

D. granting such other relief as the Court deems just and equitable.

Respectfully submitted,
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Dated: January 10, 2024

/s/ Devlin Scarber
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PROOF OF SERVICE

I hereby certify that on January 10, 2024, I presented the foregoing paper to the Clerk of the Court for filing and uploading to the ECF system, which will send notification of such filing to the attorneys of record listed herein and I hereby certify that I have mailed by US Postal Service the document to the involved non-participants.

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